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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 866,290	05 25 2001	Eugene A. Woltering	98M06.1 Woltering	4311

25547 7590 03 01 2002

PATENT DEPARTMENT  
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EXAMINER

AFREMOVA, VERA

ART UNIT PAPER NUMBER

1651

DATE MAILED: 03 01 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/866,296

Applicant's:

Woltering et al.

Examiner

Vera Afremova

Art Unit

1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on May 21, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-37 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO 892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO 948)
- 17) ☐ Information Disclosure Statement(s) (PTO 1449) Paper No(s):
- 18) ☐ Interview Summary (PTO 413) Paper No(s):
- 19) ☐ Notice of Informal Patent Application (PTO 152)
- 20) ☐ Other

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### DETAILED ACTION

Claims 1-37 are pending and subject to restriction requirement.

#### *Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to a method for assaying angiogenesis ex vivo, classified in class 435, subclass 325+, for example.
- II. Claim 14-23 and 25, drawn to method of growing a tissue sample ex vivo, classified in class 435, subclass 1.1, for example.
- III. Claims 24 and 26, drawn to a method for transplantation of a tissue sample with angiogenic vessels, classified in class 424, subclass 9.1, for example.
- II. Claims 27-37, drawn a tissue sample with angiogenic vessels, classified in class 435, subclass 1.1, for example.

The inventions are distinct, each from the other because of the following reasons:

The instant application contains claims to more than one of the combinations of categories of invention such as several products obtained by various protocols and several methods of using the products. The methods of the Groups I and II are distinct methods because they comprise different active steps wherein step of observing and/or step of assaying tissues sample which is required for the method of the Group I is not required for the method of Group II as claimed. The methods of using the tissues samples of the Group I and the Group III are distinct methods

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because they encompass the use of distinct systems such as the use of ex vivo or in vitro system and the use of in vivo system.

The several inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require independent searches (as indicated by different classification). The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the Invention of Group I would not necessarily anticipate or make obvious the any other groups. For these reasons restriction for examination purposes is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (703) 308-9351. The examiner can normally be reached on Monday to Friday from 9:00 to 5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for this Group is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Vera Afremova, Art Unit 1651

February 27, 2002.



SANDRA E. SAUCIER  
PRIMARY EXAMINER